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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961 No. 925

GIRARD LODGE No 100, etc., JOSEPH F McGOVERN, FRANK GORMLEY, WILLIAM C. DENNEY, MOSES RUFFIN,

Petitioners,

v.

GRAND LODGE, BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, et al.

BRIEF

IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED.

When, after full hearing, a union officer has been adjudicated to have expended union funds in violation of an injunction, and at a later stage of the proceedings offers defenses based on uncontested facts, does due process require the taking of additional testimony?

STATEMENT OF THE CASE.

For a complete and accurate statement of the case we refer to the 1956 opinion of the Supreme Court of Pennsylvania, reported at 384 Pa. 248 (cert. denied 351 U. S. 985), and to the subsequent five opinions of the Court of Common Pleas of Philadelphia County printed in the Record as follows:

August 14, 1957 (40a-49a)
May 2, 1958 (49a-60a)
July 28, 1959 (89a-92a)
March 17, 1960 (98a-110a)
March 25, 1960 (113a-118a)

A brief summary of the proceedings is contained at page 98(a) to 101(a) of the March 17, 1960 opinion.

Since this petition for certiorari is based entirely on the alleged lack of a hearing we shall confine our statement of the case to a reference to the hearings actually afforded to petitioners. As pointed out in the Motion to Quash (item 5 of the Record in this Court) the printed record in the Supreme Court of Pennsylvania (item 1 of the Record in this Court) omits practically all of the testimony, and the petitioners' brief in that Court (item 1 of the Record in this Court) erroneously states that there was no such evidence.

The petitioners are the financial officers of the four lodges which forfeited their charters on the grounds set out in *Grand Lodge* v. *Girard Lodge*, 384 Pa. 248 (cert. den. 351 U. S. 985). During the litigation the trial court permitted petitioners to spend $1,850 per month of the Lodge funds, and enjoined them from spending more than that amount. The Supreme Court of Pennsylvania ordered that *no* lodge funds were to be expended (42a). Defendants did spend considerably more than authorized. The judgments here in question are for that excess.

The order of the Supreme Court of Pennsylvania, 384 Pa. 248, 268, provided that the financial officers (the petitioners herein) should account for their receipts and expenditures. The Grand Lodge filed an appropriate petition requiring the financial officers to repay the excess (16a).

Depositions of the accountants who audited the books were taken, at which counsel for defendants appeared and cross-examined the witnesses. Thereafter, after conference of Court and counsel, the parties proceeded by interrogatories (44a). The Court ruled on objections to these interrogatories (42a), and granted leave to petitioners to take further depositions (48a). Petitioners declined to avail themselves of this permission. The interrogatories were answered. On this record, which in substance was an

accounting with exceptions filed and argued (51a and 53a), the Court sustained some of the exceptions, dismissed others, and entered a final decree (57a-60a). This decree stated the exact amount which each financial officer had paid out in violation of the injunction and of the Pennsylvania Supreme Court's order. The financial officers were ordered to repay these sums within ten days. No contempt, attachment or execution clauses were included in this Decree because, as the Court pointed out, it did not consider possible enforcement measures "relevant at this point, for collection remedies may never be necessary" (52a). In point of fact part of the illegal expenditures were promptly repaid by one of the recipients although not by the financial officers (72a, 77a).

This Final Decree which established, on the basis of evidence, that the financial officers had in fact paid out money contrary to Court order, was never appealed. There followed a host of motions, petitions, rules, arguments, opinions and decrees which are indicated by the docket entries (3a-7a), and summarized by the trial court at p. 101a. These proceedings raised questions of law urged in justification or extenuation of petitioners' actions, all of which were explored and sifted by the trial court as outlined in their three last opinions. All of these defenses depended on matters of record or on facts admitted and not in controversy.

One of these procedures was the petition to hold defendants in contempt of court. This petition was ancillary to the original decree which found, as a fact, that they had paid out the forbidden moneys. This fact was averred in the petition (72a) and admitted in the answer (76a). The answer cited certain matters of record and certain matters admitted by plaintiff (such as that the financial officers were bonded by plaintiff's bonding department) which were pleaded in extenuation. No issues of fact were raised; no jury trial was asked; no trial of any kind was

appropriate. The issues were explored on arguments as they should be and the defenses were found to be insufficient.

The court thereupon entered its orders finding defendants in contempt of court and gave them thirty days in which to purge themselves by payment (82a). The same day, not before, defendants asked for a jury trial (4a) which was denied.

Defendants ignored these orders. They appealed neither the contempt order nor the refusal of a jury trial, nor did they pay up.

The court refused to attach the persons of defendants (89a) but did order that judgments be entered against them (113a). It is from these judgments that the appeal was taken to the Supreme Court of Pennsylvania.

The Supreme Court of Pennsylvania affirmed, two justices dissenting.

ARGUMENT.

The repeated withdrawal of union funds by the defendant financial officers, the petitioners here, in defiance of the orders of trial court and the Supreme Court of Pennsylvania was accomplished by a variety of devices. The fact of the violations of court orders and the amounts of the illegal expenditures were thoroughly proven by evidence. The defendants were given more than ample opportunity to explain and justify, by additional testimony and by many arguments, their violations of the courts' orders. The problem before the courts therefore was stated by the Trial Court in these words:

> "The problem which now confronts us is not only that of securing reimbursement to plaintiff in accordance with our decree of June 6, 1958, but of upholding

the power of this court to enforce its decree. We cannot permit defendants to violate our decrees with impunity" (102a).

That court, having decided that it would not attach the persons of defendants, decided to permit the attachment of their property by ordinary execution process. Accordingly it entered judgments for the amounts expended in violation of the injunction.

The appellate court below saw in the complex manoeuvres of defendants "a persistent effort on the part of the defendant officers to resist or impede a full faith compliance below with the direction of our order" (Petition, p. 13). It characterized as "obstructive tactics" the taking an appeal *from the judgments* and then, on argument, attacking an *unappealed contempt order*. The majority opinion states:

> "In any event, the orders of December 23, 1958 were never enforced against the respondents; nor were they ever appealed, and the time for appealing them has long since passed. The only appeals actually now before us are from the decree in equity entered by the court below on March 17, 1960, directing the entry of money judgments against the several defendants in the respectively varying sums for which they were found to be accountable" (Petition, p. 14).

The petition for certiorari asserts that this contempt order—which, we repeat, was not appealed from, was not enforced by attachment of the person and was not before the appellate court below—was made without a hearing. The minority reach this remarkable result by inferring from the language of the recital in the contempt order ("after Petition, Answer and Argument,") that no hearing had been held (p. 15). Such an inference is totally

unwarranted and is contradicted by the record, only a small part of which was printed in the lower appellate court or here.

A glance at five pages of docket entries (2a-6a), or a perusal of the trial court's five opinions, would show that a multitude of hearings were held. Where there was a dispute of fact, testimony was taken. Where there were questions of law, arguments were held. The petition for a contempt order came after two years of fact finding. It raised no issue of fact, but only issues of law. An analysis of the petition (68a) and answer (75a) will show that all of the facts relied on by both sides were undisputed, such as matters of record.

The dissenting opinion is based on the proposition that "due process would require that defendants have a hearing wherein the court would adjudge that a contempt had or had not been committed." The fact is that defendants had two hearings—or, more accurately, two groups of hearings. At the first group of hearings the court determined, on testimony, what defendants did. At the second group of hearings it determined, on argument, that what they did constituted contempt, and to what remedy the plaintiff was entitled. It is no part of due process that testimony should again be taken at a stage of the proceedings where the issues of fact have already been determined and only points of law remain.

There is no special or important reason for granting the writ. The question is whether an extremely complicated, long drawn out set of procedures (only part of which are indicated in the printed record), ending in the entry of ordinary judgments against four men, constitute due process. In the course of four years there were many petitions, answers, depositions, interrogatories, opportunities afforded but declined for additional testimony, arguments, court opinions, exceptions and reargurnents. The petitioners, by picking out one order (and that one unap-

pealed from) seek to give an utterly unrealistic appearance to a process which protected petitioners' rights to the full.

Respectfully submitted,

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